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Commissioner

January 28, 2000

Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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Dear Colleagues,

Southwestern Bell (SWBT) has taken the steps necessary to open the Texas local exchange market to competition today, and to ensure that it remains irreversibly open in the future. In reaching this conclusion, we have relied on the following major components of a comprehensive plan that provides CLECs an opportunity to enter the Texas market through resale, UNEs, or facilities buildout.

We negotiated a Section 271 compliant interconnection agreement with comprehensive performance measures and penalties, rights to the UNE platform, and access to advanced services. Liberal MFN provisions make it available to any CLEC for a four-year term.

The OSS systems were successfully tested using actual CLEC-constructed gateways, independent evaluation of test orders and evaluation of actual CLEC orders.

SWBT has filed collocation tariffs that provide extensive collocation options and very aggressive implementation times.

SWBT has agreed to a comprehensive performance measurement plan and penalty structure. Actual performance data supports SWBT's treatment of customers at parity today. Continued future monitoring and a severe penalty structure are in place to prevent post 271 backsliding.

During the 271 process, SWBT has agreed to industry-wide groups to deal with issues such as change management and trunking. These forums are important steps which suggest these competitors are moving toward more normal and willing business relationships.

As a result of the commitments SWBT has made to achieve Section 271 compliance, competition for local exchange service is rapidly emerging in Texas. Both business and residential customers are being served. CLECs are making significant investments in facilities to provide Texas customers a choice. The balance that Congress struck to promote local competition as a condition to enter the long distance market has worked well in Texas.



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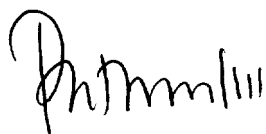
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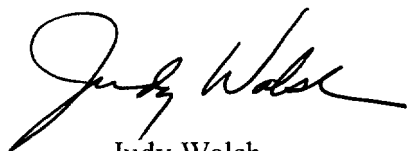
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The Texas Commission is pleased to endorse the application of SWBT for provision of long distance services in Texas under Section 271 of the Federal Telecommunications Act of 1996. The attached comments support our conclusions in detail, and tell the story of how we got to "Yes". We recommend this application for your consideration and approval.

Yours truly,



Pat Wood, III
Chairman



Judy Walsh
Commissioner



Brett Perlman
Commissioner

/attachment

Cc: Governor George W. Bush
Lieutenant Governor Rick Perry
Speaker Pete Laney
Senator David Sibley
Representative Steven Wolens
Senator Phil Gramm
Senator Kay Bailey Hutchison

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compliance with Section 271. The Evaluation of the Texas Commission, which fully analyzes the record in Texas, will be of invaluable assistance to the Commission as it undertakes its own evaluation of the record filed by SWBT.

WHEREFORE, the Texas Commission respectfully requests the Commission waive its 100-page limit and accept a lengthier evaluation from the Texas Commission.

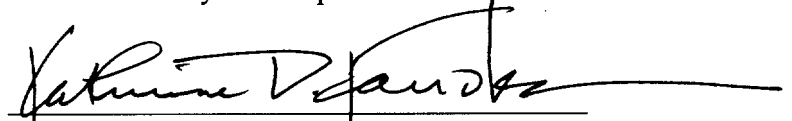
Respectfully Submitted,

Bret Slocum
Director-Legal Division
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Before The
Federal Communications Commission
Washington, DC 20554

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IN THE MATTER OF

APPLICATION OF SBC §
COMMUNICATIONS INC., AND §
SOUTHWESTERN BELL TELEPHONE §
COMPANY, AND SOUTHWESTERN §
BELL COMMUNICATIONS SERVICES, §
INC. D/B/A SOUTHWESTERN BELL §
LONG DISTANCE FOR PROVISION OF §
IN-REGION, INTERLATA SERVICES §
IN TEXAS

CC DOCKET NO. 00-4

EVALUATION OF
THE PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD III
CHAIRMAN

JUDY WALSH
COMMISSIONER

BRETT A. PERLMAN
COMMISSIONER

PUBLIC UTILITY COMMISSION
OF TEXAS
1701 N. CONGRESS AVENUE
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JANUARY 31, 2000

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APPENDIX I

Volume 1

A. Orders

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B. Final Staff Status Report

Volume 2

C. Open Meeting Transcripts

1. October 20, 1999
2. October 21, 1999
3. November 4, 1999
4. December 16, 1999

I. EXECUTIVE SUMMARY

After conducting an exhaustive and rigorous investigation¹ into Southwestern Bell Telephone Company's (SWBT) compliance under Section 271(c) of the Telecommunications Act of 1996 (FTA),² the Texas Public Utility Commission (the Texas Commission or PUCT) finds that SWBT has taken the statutorily required steps to open its local exchange and exchange access markets in Texas to competition. The Texas Commission therefore recommends to the Federal Communications Commission (FCC or Commission) that SWBT's application for provision of in-region, interLATA services in Texas be granted.

For the Texas Commission, the three prongs of "getting to YES" on a Section 271 application were the following: (1) a Section 271-compliant interconnection agreement, (2) successful independent testing of the vital Operation Support Systems (OSS), and (3) comprehensive performance data demonstrating that SWBT's wholesale customers receive the same high level of treatment as do SWBT's retail customers. This Executive Summary and the attached detailed comments lay out the path by which SWBT in cooperation with its wholesale customers and the Texas Commission "got to YES" on SWBT's long distance bid over the past two years.

The fact that approximately one million Texas local phone lines in SWBT's historic service area are today served by CLECs is testimony to the fact that SWBT's market is irreversibly open to competition. The Texas Commission believes that the Section 271 process has been crucial and effective at making this happen, and that SWBT has earned the right to enter the long distance market in Texas.

A. Prelude to Section 271 Proceeding

SWBT, Texas competitive local exchange providers (CLECs) and the Texas Commission have been working diligently to open the local market to competition. In 1996, the Texas Commission conducted its first FTA arbitration, the "mega-arbitration," which set interconnection terms, conditions, and prices for SWBT with AT&T, MCI, and other CLECs. In the ensuing two-year period, the Texas Commission worked to create an open market for the provision of local telephone service by establishing the ground rules for CLECs and SWBT to interconnect their networks and for CLECs to purchase both resale services and unbundled network elements from SWBT. In these arbitrations and in resolving post-arbitration disputes, the Texas Commission struggled with complex issues, often issues of first impression. In setting the terms of each arbitration award, the Texas Commission sought to strike a careful balance that would encourage CLECs to provide the benefits of competition to Texas customers, without threatening the integrity of the local network it had regulated for so many years.

¹ In scrutinizing every aspect of Section 271 compliance, the Texas Commission developed the most comprehensive record submitted to date.

² The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), hereinafter referred to as the FTA.

B. The Beginning of SWBT's Texas Section 271 Proceeding

In March 1998, SWBT filed with the Texas Commission its draft application for provision of in-region, interLATA services in Texas. This began PUCT Project No. 16251. (The complete record of this extensive proceeding has been provided by SWBT in its filing.) From March 1998 until December 1999, the Texas Commission conducted a comprehensive and rigorous proceeding with full participation by CLECs and SWBT. The Section 271 proceeding constituted an unprecedented expenditure of the Texas Commission's time and resources. The Texas Commission made SWBT's Section 271 proceeding a top priority because it provided a superior opportunity to ensure that the local market in Texas would be irreversibly open to competition. This recommendation summarizes Texas' Section 271 proceeding.

On April 7, 1998, the three Texas Commissioners held an open meeting at SWBT's Local Service Center in the Dallas-Ft. Worth area. On April 21-25, 1998, the Texas Commission held an extensive hearing to determine whether SWBT had met the requirements of Section 271(c). Many CLECs and other interested parties participated in these events and in the overall proceeding. After determining that SWBT had not yet met the requirements of Section 271(c), on June 1, 1998, the Texas Commission issued Order No. 25,³ listing 129 key issues that needed to be resolved before the Texas Commission could recommend approval of SWBT's application. This comprehensive Order formed the roadmap for the remainder of the proceeding, and is attached in Appendix II.

C. The Texas 271 Collaborative Process

To resolve the 129 issues specified in Order No. 25, the Texas Commission invited SWBT and CLECs to work out the issues in a collaborative process with the Texas Commission staff in order to complete the steps necessary to open the local market. Under the oversight of the Texas Commission, CLECs and SWBT participated in lengthy, often contentious meetings and technical workshops to resolve issues on virtually every aspect of Section 271 compliance. The 129 issues ranged from billing concerns and LIDB/directory listing database records to OSS change management and SWBT account manager relationship issues. Each of these issues was fully vetted, and where the parties were not in full agreement, the Texas Commissioners decided each individual issue in a series of open meetings in the Fall and Winter of 1998.

A few overarching issues were held to the end of the process in early 1999 for individual negotiations involving SWBT, CLECs, Department of Justice staff, Texas Commission Staff and Chairman Wood. Results of these discussions were presented to the full Texas Commission by SWBT in a Memorandum of Understanding (MOU) in April 1999. With modifications, this document was accepted by the full Texas Commission as a resolution of the remaining issues on April 26, 1999.

³ Order No. 25 is included in the Texas Commission's Appendix I at Tab A-1.

1. Step One: The Section 271-Compliant Interconnection Agreement and Collocation Tariffs

A key issue raised in the public interest section of the April 1998 hearing was the ease of ability of a CLEC to get an interconnection agreement with the various Section 271 commitments. In response, SWBT incorporated the results of the collaborative process (including the MOU) and prior Texas Commission, FCC, and judicial decisions into a model interconnection agreement, the Proposed Interconnection Agreement (PIA). The Texas 1996-97 "mega-arbitration" interconnection agreement formed the basis of the PIA. The Texas Commission held several workshops to address concerns expressed by CLECs about the PIA. On October 13, 1999, the Texas Commission approved the modified PIA as the Texas 271 Agreement (T2A). This one-year agreement will be automatically extended to a four-year term should the FCC approve this application.

The T2A is a comprehensive contract including: a performance remedy plan with measures relating to all aspects of SWBT's wholesale operations; prices, terms and conditions for resale, interconnection and use of unbundled network elements (individually and in combination); and specific provisions for xDSL service.

To enable CLECs to swiftly migrate to the T2A, the Texas Commission has established an automatic approval process for CLECs taking the agreement. In addition, CLECs may opt into individual sections of the T2A. For example, SWBT provides the approved performance measures and remedy plan to CLECs regardless of whether they have taken the T2A.

a. Collocation

The Texas Commission worked with SWBT and the CLECs to revise SWBT's collocation tariffs in conformance with the Commission's *Advanced Services Order*.⁴ The revised collocation tariffs address numerous CLEC concerns raised in the April 1998 hearing and discussed at length in the Texas Commission's collaborative process and workshops. Under the revised physical collocation tariff, SWBT is obligated to provide caged physical collocation, caged shared collocation, caged common collocation, cageless collocation, and adjacent collocation under some of the most aggressive timeframes in the nation. These issues are more fully discussed under Checklist Item One.

b. Performance Measures and the Performance Remedy Plan

In the collaborative process, the Texas Commission staff worked painstakingly with CLECs and SWBT to develop a comprehensive set of performance measures and business rules. The Texas Commission's goal was to develop performance measurements and business rules that accurately reflect the service provided to CLECs by SWBT. Because the competitive local telecommunications market is so new and dynamic, the performance measurements and business

⁴ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 F.C.C.R. 4761 (1999) (hereinafter "*Advanced Services Order*").

rules were revised and fine-tuned throughout the Section 271 process. The performance measures will be reviewed by SWBT, CLECs and the Texas Commission every six months, beginning in April 2000, to determine whether they are properly reflecting the behaviors and results needed for a sustainable competitive market.

The Texas Commission also approved a performance remedy plan that provides significant financial incentives for SWBT to maintain an open market and prevent "backsliding" after Section 271 approval is granted. Sub-par performance would lead to liquidated damages payable to affected CLECs (Tier 1), and sustained statewide sub-par performance over three months would necessitate payments to the Texas Treasury (Tier 2). These Tier 1 and 2 payments could reach a maximum of \$289 million per year. The Performance Measures and the Performance Remedy Plan are more fully discussed under the Public Interest Section.

Texas Commission staff continue to monitor the monthly performance data filed by SWBT to ensure compliance and to determine any Tier-2 assessments payable to the State of Texas. The Texas Commission is also empowered to review disputes between a CLEC and SWBT relating to data accuracy. The Texas Commission is committed to the ongoing implementation of the performance measures and remedy plan as effective post-271 "antibacksliding" tools.

c. Unbundled Network Elements

Despite changes in the original list of UNEs made by the FCC in the recent *UNE Remand Order*, SWBT has agreed to provide the Texas 1996 arbitration list of UNEs (the original FCC seven plus dark fiber and sub-loop) at the 1997 final TELRIC recurring and non-recurring rates. It will also provide UNE platform combinations for residential and rural business customers for the four-year term of the agreement, and to urban business customers for the first two years of the agreement. SWBT agreed to provide enhanced extended loops of various types, allowing CLECs to provide facilities-based service without the need to collocate in every SWBT central office. These issues are more fully discussed under Checklist Items Two and Four.

The Texas Commission finds that these UNE commitments more than satisfy the obligations of the Federal Telecommunications Act. In particular, the Texas Commission believes that SWBT's commitments regarding UNE combinations will accelerate statewide competition for residential customers, which is a pre-eminent policy goal for Texas.

d. xDSL Appendix

The Texas Commission also found that SWBT satisfies its Section 271 obligations relating to access to xDSL-capable loops. The T2A contains a DSL attachment, with rates, terms, and conditions for xDSL-capable loops. The volume of xDSL orders has steadily grown in Texas since September. SWBT's reconciled performance data demonstrates an acceptable level of performance, and SWBT has added heightened performance guarantees for xDSL and nascent services to the remedy plan. SWBT also agreed to several enhancements and modifications to its DSL preordering, ordering and provisioning processes that will further ensure that CLECs have nondiscriminatory access. Along with these commitments, SWBT

agreed to follow the Texas Commission's determination in the recently concluded Texas xDSL arbitrations. The Texas Commission notes that, pursuant to the *SBC/Ameritech* merger conditions, SBC has created a separate affiliate for the provision of retail advanced services and is offering surrogate line sharing discounts. The Texas Commission has certified the separate affiliate, ASI, to do business in Texas, and ASI opted into the T2A earlier this month. These issues are more fully discussed under Checklist Item Four.

2. Step Two: The Independent Operation Support Systems (OSS) Test

Toward the end of the first phase of the collaborative process, in November 1998, the Texas Commission determined that, with the exception of SWBT's EASE system,⁵ SWBT's OSS systems were not processing commercial volumes of orders. The Texas Commission therefore engaged Telcordia to conduct an independent, third party, carrier-to-carrier readiness test of SWBT's OSS systems to ensure that those systems were able to sufficiently handle reasonable, anticipated commercial volumes.⁶

Two CLECs that had already developed Electronic Data Interfaces to interconnect with SWBT's OSS systems offered their actual interfaces for use in the test. The Texas Commission-monitored carrier-to-carrier testing took place in multiple phases. The first phase of testing developed the master test plan that, among other things, clarified and refined the test scope and methodology. The Technical Advisory Group (TAG)⁷ drafted this plan.

The second phase of the OSS test focused on the ability of SWBT's OSS to handle both volumes of orders (the capacity test) and diversity of orders (the functionality test). Also in the second phase, Telcordia evaluated the implementation of performance measures that had been adopted by the Texas Commission in the collaborative process.

Following these two phases, Telcordia presented an interim report on its findings, clarifying critical issues that needed further review. The interim report further delineated system, process, and documentation changes made by SWBT in response to issues identified by Telcordia or the CLEC test participants.⁸

Telcordia began the third phase after the interim report. In the summer of 1999, Telcordia continued its root cause analysis of earlier test findings and used these to develop the re-test plan. CLEC input from the technical presentation, the subsequent question and answer periods, written comments, and informal one-on-one communications assisted Telcordia in

⁵ SWBT's EASE system is used to process resale orders. Its own retail representatives also use SWBT's EASE system.

⁶ The OSS readiness test evaluated performance in the areas of pre-ordering, ordering, provisioning, maintenance and repair, billing, documentation, change management, and performance measure implementation.

⁷ TAG was composed of the Texas Commission, SWBT, Telcordia, AT&T, MCI/World Com, Allegiance, NorthPoint, Covad and E*Spire.

⁸ While the analysis activities from the initial test were not complete by the interim report release date, the interim report summarized the work to date.

identifying re-test needs. The re-test plan was executed in August 1999. The OSS issue is more fully discussed under Checklist Item Two.

Throughout its review Telcordia validated the performance data collection process to ensure adequacy of internal controls and conformance with the business rules. To the extent any measure showed disparity, the Texas Commission worked with SWBT and CLECs to determine the cause of the disparity. As a result of this analysis and to ensure the development of consistent and meaningful data, the Texas Commission continued to work with SWBT and CLECs to further refine certain performance measurements, the business rules, and aspects of the remedy plan.

On October 20, 1999, Telcordia presented its final report to the Texas Commission in Open Meeting.⁹ In its final report, Telcordia concluded that SWBT's OSS were "operationally ready to handle commercial volumes of transactions" but highlighted seven issues for Texas Commission focus: (1) scalability forecasting; (2) implementation of eleven new performance measures; (3) closure of 30 issues from the retest; (4) increased customization of the PM reporting process; (5) data security and auditability; (6) confirmation of effectiveness of xDSL ordering; and (7) further training for SWBT and CLEC personnel. Following the hearing on Telcordia's final report, the Texas Commission worked further with SWBT and CLECs on those seven issues.

3. Step Three: Recent Performance Data Review

For the Texas Commission's November 4, 1999 open meeting, the Texas Commission staff performed a thorough analysis of SWBT's performance data for the months of June through October 1999 to ascertain the overall status of SWBT's wholesale performance.¹⁰ The performance data evaluation pointed out the need for certain modifications to SWBT's data collection and provisioning processes. During the months of November and December, 1999, the Texas Commission staff worked with CLECs and SWBT to implement those modifications.

For example, during the review of performance measures (PMs) relating to trunk blockage, the Texas Commission learned that SWBT was not excluding blockage data relating to CLEC-caused events, which is a permitted exclusion under PM-70, percent trunk blockage. After thorough review of the raw data and recalculation of the performance measure, what initially appeared to be sub-benchmark performance became a passing grade. In the process of reviewing this critical issue, a number of process improvements were put into place – changes which required commitments from both SWBT and CLECs to continue to work collaboratively on crucial aspects of network planning and forecasting. As another example, the Texas Commission discovered that PM-78, average trunk installation interval, did not capture "held

⁹ The transcript of the October 20-21, 1999 meeting is included in the Texas Commission's Appendix I, Tab C-1 and C-2 respectively.

¹⁰ PUC's Evaluation of SWBT Performance Measure Data, Application of Southwestern Bell Telephone Company, App. C, Vol. 135, Tab 1942 (Nov. 2, 1999) (hereinafter "Performance Measure Evaluation"). This review focused on the Tier-2 (customer and competition affecting) performance measures. A copy of the transcript from the November 4, 1999 Open Meeting is included in Appendix I, Tab C-3 of the Texas Commission's filing.

orders.”¹¹ The Texas Commission was concerned that the failure to capture “held orders” did not completely reflect SWBT’s ability to provide adequate trunking facilities on a timely basis. To address this concern, the Texas Commission established a new measure, PM-73.1, to measure held trunk capacity.

In the final two months of this proceeding, the Texas Commissioners, staff and parties continued to review raw performance data, refine wholesale processes and evaluate the most recent performance data. Although there were not a large number of data points relating to xDSL, a manual review of the data addressed a number of issues raised by Telcordia in its final report. As with trunking, the in-depth focus on this important area resulted in clarifications to and improvements in the pre-ordering, ordering and provisioning process, to ensure that CLECs have a meaningful opportunity to compete with SWBT during the time SWBT is transitioning its xDSL operations to a separate data affiliate.¹²

Telcordia, SWBT, MCI and TCG (now AT&T) also reconciled raw data relating to provision of UNE loops (“hot cuts”). The Texas Commission discovered that existing performance data captured both late starts and early cutovers, but did not report the length of time these coordinated cutovers were taking. So, this computation was done manually from historic data to ascertain whether SWBT was performing this manual process in an acceptable timeframe. The Texas Commission concluded that the performance was acceptable and established an interim performance measure PM-114.1 to measure the entire provisioning interval for the coordinated hot cuts. A final performance measure will be established in the April 2000 six-month review; meanwhile, SWBT will pay for all misses (> 120 minutes) at \$150 per occurrence.

Throughout the following report, performance data for each Tier 2 measure is reviewed and discussed under the relevant Checklist Item.

D. Pulling It All Together

At the Texas Commission’s December 16, 1999 open meeting, all of the remaining issues relating to Telcordia’s seven items and the recent performance data were discussed and were resolved to the satisfaction of all three Commissioners.¹³ Considering the operational Texas 271 Agreement, the positive Telcordia OSS report and the fully-analyzed performance data, the Texas Commission then found that SWBT had fully complied with Section 271 and voted without qualification to support SWBT’s application for interLATA authority.

¹¹ “Held orders” are orders that SWBT does not process due to lack of facilities.

¹² The DSL appendix of the T2A will be updated to reflect the Texas Commission’s ultimate decision on a recently-issued arbitration award in Docket No. 20226, *Petition of Accelerated Connections, Inc. d/b/a ACI Corp. for Arbitration to Establish and Interconnection Agreement with Southwestern Bell Telephone Company* and Docket No. 20272, *Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and related Arrangements with Southwestern Bell Telephone Company*.

¹³ A copy of the transcript of the December 16, 1999 Open Meeting is included in Appendix I, Tab C-4 of the Texas Commission’s filing.

E. Post-Section 271 Activities

Although the Section 271 approval has been a powerful incentive, it cannot be an ongoing surrogate for the lasting normal customer/supplier business relationships that will be needed to sustain local competition. In that regard, the Texas Commission felt it was crucial that a number of structured processes be set up to foster the development of a healthy provider-customer relationship.

During the Section 271 proceeding, SWBT committed to several forums designed to address issues that impact SWBT and CLECs alike. SWBT agreed to a trunking users group, a change management process and working group, an xDSL working group, and a general users group. The trunking forum was established as one vehicle for addressing trunk blockage problems that were identified in the April 1998 hearing. Through the trunking forum, CLECs and SWBT share in network planning. The trunking forum meets on a regular basis with Texas Commission participation and monitoring¹⁴ to ensure that adequate planning will forestall blockage problems.

SWBT also agreed to participate with CLECs in a Change Management Process; the Change Management Process controls the dynamic environment of OSS systems such as EDI, using a negotiated document, *Interface Change Management Process: SWBT and Competitive Local Exchange Carrier (CLEC)* ("Change Management Document"). The Change Management Document outlines the processes for changes to existing interfaces, introduction of new interfaces, retirement of existing interfaces and testing. The document also explains each Outstanding Issue Solution and the processes for a "go/no-go" vote before a release.

The DSL working group, which emerged from MOU discussions, will establish competitively neutral spectral compatibility standards and spectrum management rules and practices for deployment of loop technology absent national industry standards.

SWBT and the CLECs have formed the general users group to address issues other than trunking and OSS. The Texas Commission also has its fabled "rope 'em and throw 'em" post-interconnection agreement dispute resolution process to expeditiously handle issues that are not mutually resolved by SWBT and its wholesale customers.

F. Conclusion

As a result of the measures taken by SWBT to achieve Section 271 compliance, competition for the provision of local exchange and exchange access service is rapidly emerging in Texas. CLECs are able to enter the market by any of the three means provided in the FTA and are doing so at ever-increasing rates. CLECs are serving both residential and business customers in virtually all areas of Texas served by SWBT. As would be expected, CLECs have targeted business customers and residential customers in urban areas of Texas.

¹⁴ The meetings are taped; the audiotape and an agenda of the meeting are filed in PUCT Project No. 20400.

SWBT estimates that CLECs serve at least 1.3 million customer lines in Texas. While this precise number is difficult to confirm, the Texas Commission believes that CLECs are providing service at significant levels to residential and business customers through resale, through their own facilities, or through the purchase of unbundled network elements from SWBT. A full analysis of the underlying data is provided in the Public Interest and Track A sections. The Texas Commission believes that the impressive growth experienced during the pendency of this proceeding illustrates that CLECs, especially those that are facilities-based, are making significant, ever increasing investments in Texas that will provide Texas consumers with a choice of local phone providers.

Congress struck a careful balance when it enacted the FTA, requiring incumbents like SWBT to open their networks to their competitors in exchange for the ability to provide long distance service. The Texas Commission firmly believes that the record developed in Texas illustrates that Section 271 works to open local markets -- and it works well.

II. COMPLIANCE WITH COMPETITIVE CHECKLIST ITEMS

A. Checklist Item One -- Interconnection

Has SWBT provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1), pursuant to section 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

The Texas Commission finds that SWBT has satisfied the requirements of checklist item 1. The record reveals that SWBT provides CLECs with interconnection trunking in Texas, at any technically feasible point, on terms and conditions that are just, reasonable, and nondiscriminatory.¹⁵ The record further reveals that SWBT provides CLECs with interconnection trunking that is equal-in-quality to the interconnection SWBT provides to its own retail operations.¹⁶ SWBT makes interconnection available in Texas through interconnection agreements, including the Texas Commission-approved T2A agreement. The record establishes that SWBT provides physical and virtual collocation, through a Texas Commission-approved tariff, that satisfies the requirements of Sections 251 and 271 of the FTA. SWBT receives orders for interconnection trunks through the Access Service Request (ASR) process and accepts ASRs through its EDI system, (an application-to-application interface) through its LEX system (a proprietary OSS system) and through manual orders. SWBT provides performance data that measures the quality and extent of the service it provides to CLECs for collocation and interconnection.

1. Interconnection Trunking

In the FCC's *Local Competition Order*,¹⁷ the FCC stated that the parity requirement mandates that an ILEC provide interconnection that is indistinguishable from that which it provides itself, an affiliate, or another party.¹⁸ The FCC further stated that an ILEC's interconnection facilities must be designed to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within the ILEC's own network.¹⁹ To compare the quality of interconnection that a BOC

¹⁵ See *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20662-63, para. 222 (1997) (*Ameritech Michigan*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, at para. 63 (Dec. 1999) (hereinafter "*Bell Atlantic New York*").

¹⁶ See *Id.*

¹⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Local Competition First Report and Order, 11 F.C.C.R. 15499, 15612 (1996) (hereinafter "*Local Competition First Report and Order*").

¹⁸ *Ameritech Michigan* at 20662-63, para. 223. The FCC stated that the relevant question is whether a BOC is providing interconnection equivalent to the interconnection it provides itself, not whether a CLEC continues to acquire customers or whether a customer notices the difference in quality in terms of service received from a CLEC. Accordingly, an ILEC's duty to provide interconnection equal in quality is not limited to quality perceived by end-users.

¹⁹ *Id.*

provides to itself with that which it provides to others, a BOC must provide adequate data.²⁰ Such data would include information regarding the number of trunks in particular blocked trunk groups.²¹

SWBT provides for interconnection using any of the five alternatives: mid-span fiber interconnection; physical collocation interconnection; virtual collocation interconnection; SONET-based interconnection; and leasing of SWBT facilities.²² SWBT will provide other technically feasible alternatives under the BFR process set forth in the T2A.²³ All five methods are available at the trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to unbundled network elements.²⁴ SWBT will make interconnection at the line-side of a local switch available, but has had no requests for such interconnection.²⁵

SWBT states that as of October 1999, SWBT was providing CLECs with 322,720 interconnection trunks.²⁶ Over 75 percent of the interconnection trunks were two way trunks.²⁷ SWBT states that it has exchanged over two billion minutes of local and EAS²⁸ traffic over these interconnection trunks, as well as an additional 15.6 billion minutes of ISP traffic for the period January 1997 through August 1999.²⁹

When Checklist Item One was addressed at the April 1998 hearing, many CLECs complained about trunk blockage problems. As indicated in the recommendations in Order No. 25, the Texas Commission sought to bring SWBT's commitments and performance on trunking issues into compliance by two means: first, the Texas Commission required SWBT to engage in shared planning of the network through a trunking users group, and, second, the Texas Commission established a series of performance measures that would provide objective data as to whether SWBT was providing parity service to CLECs. Trunking issues were discussed at length in collaborative session and Open Meetings.

SWBT agreed during the collaborative sessions to meet with CLECs individually and to begin a trunking users group with CLECs for the purpose of cooperative planning of trunking

²⁰ *Id.* at 20603-04, para. 113. ("Ameritech has supplied trunk blocking data in a way that neither the Commission nor Ameritech's competitors can validate it or evaluate its significance, as Ameritech's own analysis indicates.")

²¹ *Id.* at 20604-05, para. 114. ("Clearly, blockage on a large trunk group serving a major metropolitan area could result in a greater number of blocked calls than would blockage on a smaller trunk group.")

²² Affidavit of William C. Deere, Application of Southwestern Bell Telephone Company, App. A-2, Tab 3, paras. 5, 14 (Jan. 10, 2000) (hereinafter "Deere Aff.").

²³ *Id.* at para. 14.

²⁴ *Id.* at para. 20.

²⁵ *Id.* at 21.

²⁶ Affidavit of John Habeeb, Application of Southwestern Bell Telephone Company, App. A-1, Tab 1, (Jan. 10, 2000) (hereinafter "Habeeb Aff.").

²⁷ Deere Aff., App. A-2, Tab 3, para. 35.

²⁸ Extended Area Service

²⁹ Deere Aff., App. A-2, Tab 3, para. 33.

facilities³⁰ and to establish a means of notifying the industry of jeopardy situations that will prevent the establishment of forecasted trunking.³¹ SWBT's agreement was memorialized in the T2A.³² SWBT and the CLECs have been meeting through the trunking users group since January of 1999.³³ The meetings take place quarterly or as often as the group determines. The T2A allows a CLEC and Texas Commission Staff to request an ad hoc meeting to address emergency issues.³⁴ SWBT has released and discussed SWBT's consolidated interconnection, semi-annual general trunk forecast³⁵ in the user group meetings.³⁶ The T2A also provides for individual meetings between the CLEC and SWBT "as reasonably necessary. . .to discuss issues including, but not limited to, trunk forecast, shortage of facilities, jeopardy situations, and other topics related to providing adequate trunking in the local network."³⁷ These provisions provide adequate assurances that CLECs' concerns regarding reliability and planning are and will be addressed.

³⁰ "SWBT and the CLECs are jointly responsible for forecasting, monitoring and servicing all two-way trunk groups between the two networks." Deere Aff., App. A-2, Tab 3, para. 49.

³¹ Final Staff Status Report at on Collaborative Process, Application of Southwestern Bell Telephone Company, App. C, Vol. 135, Tab 1947 (Nov. 18, 1998) (hereinafter "Final Staff Status Report") (The Final Staff Status Report is included in the Texas Commission's Appendix I at Tab B); *See also*, Deere Aff. App. A-2, Tab 3, para. 50; Affidavit of Michael Auinbauh, Application of Southwestern Bell Telephone Company, App. A-3, Tab 1, Attach. A-Texas 271 Agreement, Attach. 11 ITR, para. 4.2 (Jan. 10, 2000) (hereinafter "T2A"). ("Jeopardy situations exist when, for example, SWBT does not have adequate switch terminations and DCSs (digital cross connect systems) or other instances when SWBT is unable to accept trunk orders because of inadequate network capacity.") In the *Ameritech Michigan* decision, the FCC and DOJ agreed that "EOI trunk blocking rates could potentially be reduced with improved traffic forecasts" and urged CLECs to provide such data to the fullest extent possible. The FCC, however, found that Ameritech did not establish that the CLECs' failure to provide forecast data was a primary cause for call blocking to CLECs' customers. *Ameritech Michigan* at 20606-07, para. 118. Establishing appropriate trunking architecture and proper interconnection arrangements is the responsibility of both carriers. In order to provide interconnection on nondiscriminatory terms, however, a BOC has an obligation to ensure that a CLEC has sufficient information about its network to remedy network blockage that occurs within a BOC's network, but affects both the BOC's customers and the CLEC's customers. *Id.* In order to provide interconnection on nondiscriminatory terms, a BOC must provide CLECs with the data they need to control trunk blockage.

³² T2A, Attach. 11, ITR, Sec. 4.2.

³³ Deere Aff., App A-2, para. 50 ([S]ince January 1999, SWBT has held regularly scheduled meetings with all interested CLECs, to discuss trunking issues, central office rearrangements, trunk forecasting and other interconnection subject requested by CLECs.)

³⁴ T2A, Attach. 11, ITR at Sec. 4.2 ("Any dispute between SWBT and CLEC concerning the cooperative planning, the jeopardy notification or the need for a requested ad hoc meeting will be raised with and decided by Commission Staff."); Deere Aff., App. A-2, Tab 3, para. 50.

³⁵ The T2A requires that the consolidated forecast be formatted in a manner that does not identify individual CLECs. T2A, Attach. 11, ITR at Sec. 4.2. It requires SWBT to make a presentation that includes a consolidated CLECs' forecast; the resulting SWBT forecast for each central office in Texas; and a summary of the forecast for SWBT's operating areas in Texas. *Id.* ("SWBT will disclose the forecast without adjustment of the aggregated forecast data supplied to SWBT by CLECs, and it will disclose the amount of any adjustment that SWBT has made in arriving at the actual consolidated forecast that SWBT will use for trunk planning purposes. In disclosing adjustments, SWBT will identify to the users group the amount of adjustment made to a route or switching office without revealing any individual CLEC forecast. SWBT will not disclose any forecast data received from CLEC to SWBT personnel other than those with technical network planning responsibility, and under no circumstances will SWBT use forecast data received from CLEC for marketing or competitive purposes.")

³⁶ Deere Aff., App. A-2, Tab 3, para. 50.

³⁷ T2A, Attach. 11, ITR, Sec. 4.2; Deere Aff., App. A-2, Tab 3, para. 50.

In October and November 1999, in the context of evaluating SWBT's performance on trunking, CLECs complained that SWBT routinely places moratoriums on trunk ordering or limits the number of trunks a CLEC can request, thereby skewing performance data.³⁸ SWBT insisted that any limitations are not absolute.³⁹ Although SWBT initially indicated that a limit of eight DS1 trunks per day, per market area is a guideline put in place because of capacity concerns for tandem trunks,⁴⁰ SWBT later agreed to modify its guideline for trunk ordering.⁴¹ As modified, SWBT established a guideline of 12 DS1 trunks per CLEC per day in each of the four market areas in Texas.⁴² SWBT further indicated a willingness to work individually with CLECs to meet demands in excess of 12 DS1 trunks per day. When considering parity, SWBT stated that the "limit" is imposed across the board, for all CLECs and SWBT, so there is no showing of discriminatory conduct.⁴³ However, the CLECs point out that limiting the number of tandem trunks they can provision is a problem because the engineering designs for the tandem trunks are less costly; therefore, CLECs tend to route traffic through the tandem until their networks mature.⁴⁴ Because CLECs often cannot anticipate where their traffic will terminate, when a CLEC turns up a large customer, the only option is to run the traffic through tandem.⁴⁵ SWBT responded that tandem traffic is very costly from an engineering standpoint, and that the participants are working together in order to route more traffic directly to end-offices.⁴⁶

Although CLECs have expressed concerns, the Texas Commission finds that SWBT's guideline is not discriminatory, especially in light of the fact that individual CLECs can negotiate greater amounts when necessary and because SWBT and the CLECs are working together individually and through the trunking forum to address these extremely complicated network configuration, transit traffic,⁴⁷ and exhaust situations.

Commercial Performance

SWBT has implemented nine Texas Commission-approved performance measures⁴⁸ that provide objective criteria for parity comparisons. The implemented performance measures compare trunk blockage between SWBT and CLECs, capture missed due dates, and provide data on installation and restoration intervals.

³⁸ Tr. at 135-161 (Nov. 4, 1999).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Deere Aff., App. A-2, Tab 3.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Transit traffic is traffic that originates from and terminates to non-SWBT entities.

⁴⁸ Deere Aff., App. A-2, Tab 3, para. 30.

PM-70 captures the trunk blockage by measuring the percentage of calls blocked on outgoing traffic from SWBT end office to CLEC end office and from SWBT tandem to CLEC end office.⁴⁹ Based on data for the months of August, September, October, and November, SWBT has provided compliant performance on a statewide basis for SWBT tandem office to CLEC end office; based upon data for September, October, and November, SWBT has provided compliant performance on a statewide basis for trunks extending from SWBT end office to CLEC end office. SWBT did not provide compliant performance for the month of August for SWBT end office to CLEC end office. While this fact concerned the Texas Commission, the fact that the performance improved for subsequent months alleviates, to a large extent, the Texas Commission's concern, especially in view of SWBT's compliant performance for trunks extending from SWBT tandem office to CLEC end offices. Inasmuch as the vast majority of CLEC traffic is passed on SWBT tandem to end office trunks, the Texas Commission finds that the vast majority of CLECs were not impacted by the lower performance for August.⁵⁰

The Texas Commission anticipates that some CLECs may raise concerns relating to disaggregated data for PM-70. While it is true that SWBT's performance when disaggregated by geographic area appeared not to have met the benchmark in limited areas,⁵¹ the Texas Commission notes that the deficiencies caused the Texas Commission to review the entire trunk utilization, forecasting, ordering and provisioning process, as well as plans to relieve blockage through proper cooperative planning between or among SWBT and CLECs. As a result of this review, SWBT agreed to implement process improvements relating to trunk forecasts, data collection, application of exclusions, and the process for ordering trunks.

PM-71 captures the percentage of local common transport trunk groups with greater than two percent blockage. The measure is disaggregated by geographic region and has a parity standard as well as a benchmark.⁵² For compliance purposes, SWBT's performance is required to meet parity or the benchmark; the benchmark establishes a cap for performance even if

⁴⁹ These measures are disaggregated by geographic region. The blocked calls and total calls are gathered during the official study week each month. Several CLECs complained about this process. The Texas Commission found that this was the appropriate measure at this point in time, inasmuch as the measures were established with reference to the Bellcore standard. The Texas Commission recognizes that this standard was developed using a single provider model, and it may need to be revised after careful study by all interested parties as part of the six-month review process. In addition, the calls are also disaggregated for SWBT end office to CLEC end office trunks and for SWBT tandem to CLEC end office trunks. The Texas Commission has established a blocking standard of B.01 for this measurement. This one percent blockage criteria was necessary to ensure that the CLECs' network traffic does not experience the same blockage as SWBT's network because of the disproportionate impact on new entrants.

⁵⁰ For example, the call volume for SWBT tandem office to CLEC end office for the month of October was 10,267,475 on a statewide basis, whereas the call volume for SWBT end office to CLEC end office from the same month was 153,608 on a statewide basis.

⁵¹ The performance delivered to CLECs did not meet the Texas Commission standard for the Houston area for July, August and September as reported. SWBT's performance as related to trunk blockage from SWBT's tandem to CLEC end office, complied with the Commission standard for June, July, and August in Central and West Texas, Houston, and South Texas; however, the performance did not meet the PUCT standard for the Dallas/Ft. Worth area during the month of June. In September, SWBT did not meet the standard in Central and West Texas or Houston. The call volumes in Central and West Texas were 2,053,034, and in Houston were 2,262,881. The blockage in Central and West Texas was at 7.67 percent for September and in Houston it was 2.86 percent.

⁵² The benchmark is the same as that set in the Commission's substantive rules.

SWBT's retail performance is worse than the benchmark. The performance reports filed by SWBT for June, July, and August show that SWBT met the requirement for all three months in Central and West Texas, Dallas/Ft. Worth, and Houston; however, SWBT failed to meet the requirement for South Texas for all three months. Subsequently, the performance reports filed by SWBT for September show that SWBT complied with the standard in all geographic regions. The performance data for all CLECs on a statewide basis shows that SWBT delivered better than parity performance during the months of August through November.

PM-73 measures percentage of missed due dates on interconnection trunks. It is a Tier-1 parity performance measure. On a statewide basis for all CLECs, SWBT delivered better than parity performance for the months of July through November. SWBT provided parity service in Central/West Texas, Dallas/Ft. Worth, and South Texas for July through October. In the Houston area during the month of August, performance was at parity. September and October data, however, revealed some problems.⁵³ Further investigation revealed that the misses were caused by a number of reasons, and that SWBT needed to make several process changes to ensure future compliance. SWBT has made the needed process changes.⁵⁴ The Texas Commission believes that these changes should result in parity performance to competitors. In conjunction with review of the data for PM-73, the Texas Commission became concerned that the data as collected was not accurately reflecting CLECs' ability to obtain interconnection trunks in a timely manner because SWBT was not capturing data on "held orders."⁵⁵ SWBT agreed to establish a new performance measure, PM-73.1, to capture percentage of held orders greater than 90 calendar days.⁵⁶

PM-77 measures average trunk restoration for service affecting trunk groups. "Service affecting" is defined as 20 percent of a trunk group out of service that causes trunk group blockage. These measures are disaggregated by geographic region by tandem trunk group and non-tandem trunk group. The benchmarks established are one hour for a tandem trunk group and two hours for a non-tandem trunk group. The reports filed by SWBT for June, July, August, and

⁵³ Affidavit of William R. Dysart, Application of Southwestern Bell Telephone Company, App. A-5, Tab 1, para. 557 (Jan. 10, 2000) (hereinafter "Dysart Aff."). ("In August, there were orders issued for 10,808 trunks with 386 missed due dates. In September, there were orders issued for 11,701 trunks with 1,248 missed due dates. In October, there were orders issued for 13,291 trunks with 1,296 missed due dates.")

⁵⁴ *Id.* ("First, to rectify conflicts/problems in a timely fashion and allowing downstream work groups more time to perform their functions, the Houston Pre-Service Trunking Group and the Local Operations Center (LOC) have implemented a joint procedure of monitoring the in-progress service orders with future due dates and escalating orders that are near the due date to ensure timely completion. These controlling groups will identify those service orders nearing the due date and escalate these orders to the appropriate work group for resolution of conflicts/problems, and therefore minimize the missed commitments. The Houston Pre-Service Trunking Group has also been provided analysis resources and a tracking system to ensure escalations are timely and to help validate and scrutinize function codes and log entries to identify core problems.")

⁵⁵ "Held orders" are orders that SWBT does not process due to lack of interconnection facilities.

⁵⁶ Dysart Aff., App. A-5, Tab 1, para. 558. ("Effective with the January, 2000 performance measurements, SWBT agreed to further address this timeliness issue by adding an interim measurement (PM-73.1) on the percentage of held interconnection trunk orders greater than 90 calendar days. (See, PM-73.1 Attachment 17, Appendix III: Performance Measurement Business Rules (Version 1.6)). On an interim basis until the first six month review process, this interim measurement will not be subject to the K exemption, meaning that SWBT's total payments for a given level of misses will be higher.")

September show that average trunk restoration for service affecting trunk groups met the established requirements in all geographic regions. There were no trouble reports during the months of August through November.

PM-78 measures the average time for the installation of interconnection trunks. The Texas Commission has established 20 business days as the benchmark.⁵⁷ This measure is disaggregated by geographic region and by the type of trunks. On a statewide basis, SWBT provided compliant performance for interconnection trunks during the months of July through October. For other types of trunks, there were fewer than 10 data points. It should be noted that a "customer not ready" exclusion began to be applied in July. The Texas Commission expects the trunking forum and other process improvements to more properly incent both SWBT and the CLECs to work together to make provisioning more efficient.

2. Collocation

Section 251(c)(6) of the FTA requires ILECs to permit collocation of "equipment necessary for interconnection or access to unbundled network elements. . . ."⁵⁸ In the *Local Competition First Report and Order*, the FCC adopted minimum requirements for nondiscriminatory collocation arrangements.⁵⁹ In the *First Report and Order and Further Notice of Proposed Rulemaking* released by the FCC on March 31, 1999, the FCC established additional national rules for collocation.

As committed to by SWBT in its Memorandum of Understanding with the Texas Commission, SWBT's physical and virtual collocation tariffs have been revised in conformance with the Texas Commission recommendations, and address the myriad CLEC concerns discussed at length in the Texas Commission's collaborative process and workshops. The revised collocation tariffs became effective on October 29th after Texas Commission approval.⁶⁰

a. Physical Collocation

The revised physical collocation tariff complies with the FCC's *Advanced Services Order*. The collocation tariff obligates SWBT to provide collocation in all eligible structures.⁶¹ SWBT is obligated to provide the following types of collocation: caged physical collocation, caged shared collocation, caged common collocation, cageless collocation and adjacent

⁵⁷ The Commission established a benchmark instead of a parity measure because SWBT installs many more trunks for CLECs than for its retail side.

⁵⁸ 47 U.S.C. § 251(c)(6).

⁵⁹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *Local Competition First Report and Order*, 11 F.C.C.R. 15499 (1996).

⁶⁰ See PUCT Docket No.16251, Order No. 59, Approving Revised Physical and Virtual Collocation Tariffs, Application of Southwestern Bell Telephone Company, App. C, Vol. 134, Tab 1925, (Oct. 29, 1999) (hereinafter "Order No. 59").

⁶¹ See SWBT's Physical and Virtual Collocation Tariffs, Application of Southwestern Bell Telephone Company, App. C, Vol. 135, Tab 1947, Physical Collocation Tariff (Nov. 2, 1999) (hereinafter "Physical Collocation Tariff").

collocation.⁶² The tariff further requires SWBT to provide other collocation arrangements that have been demonstrated to be technically feasible.⁶³ In compliance with the *Advanced Services Order*, the tariff provides a rebuttable presumption of technical feasibility when a collocation arrangement has been deployed by any ILEC.⁶⁴ It also requires SWBT to allow collocation in adjacent on-site and off-site structures, to the extent technically feasible, when physical collocation space within a SWBT eligible structure is legitimately exhausted.⁶⁵

The revised physical collocation tariff provides that "SWBT may not reserve space for equipment for itself, for/of advanced or interLATA services affiliates or other SWBT affiliates or for future use by SWBT or its affiliates under conditions that are more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own use."⁶⁶ The tariff allows SWBT to reserve space for transport equipment for a period of one year, and for switching, power and MDF equipment up to a maximum period of five years of anticipated growth. It allows SWBT to reserve space for DCS for 3 years of anticipated growth. The tariff requires SWBT to remove all unused obsolete equipment from the eligible structure before making a determination that the space is legitimately exhausted. The tariff also requires SWBT to remove all unused obsolete equipment from an eligible structure that has no space available for physical collocation upon request of a CLEC or the Texas Commission.⁶⁷ In offices where SWBT cannot meet forecasted collocation demand, SWBT must remove obsolete unused equipment in advance of a request from a CLEC or Order from the Texas Commission.

The collocation tariff sets specific intervals for quotes,⁶⁸ response to collocation requests, and provisioning.⁶⁹ SWBT is required to notify a CLEC within 10 days of the submission of a completed application as to whether the CLEC's request will be granted. The tariff allows a

⁶² See SWBT's Physical Collocation Tariff, Sec. 6.1.1. In the *Advanced Services Order*, the FCC expanded the types of collocation that ILECs are required to provide to CLECs. ILECs must make available the following types of collocation: shared collocation cages, cageless collocation arrangements, and when space is legitimately exhausted in a particular ILEC premises, collocation in adjacent controlled environment vaults or similar structures to the extent technically feasible. *Advanced Services Order*, 14 F.C.C.R. at 4773-74, para. 44.

⁶³ The FCC further concluded that a rebuttable presumption will exist that a particular collocation arrangement is technically feasible if any ILEC has deployed such a collocation arrangement in any area of the country. *Advanced Services Order*, 14 F.C.C.R. at para. 45.

⁶⁴ Physical Collocation Tariff, Sec. 6.1.1. (F).

⁶⁵ *Id.* at Sec. 6.1.1(E). "Legitimately exhausted" is defined in Section 2: "Denotes when all space is a Central Office (CO) that can be used or is useful to locate telecommunications equipment in any of the methods of collocation available under this Tariff is exhausted or completed occupied."

⁶⁶ *Id.* See also, Sec. 6.2.5 ("SWBT will apply the same reservation policies to Collocators as it applies to itself.")

⁶⁷ *Id.* at Sec. 6.2.5.

⁶⁸ See, *Id.* at Sec. 6.1.3(E).

⁶⁹ *Id.* at Sec. 6.1.3. In the *Advanced Services Order*, the FCC refused to adopt specific provisioning intervals for collocation, but emphasized the importance of timely provisioning and encouraged state commissions to set specific time intervals within which the ILECs must respond to collocation requests. *Advanced Services Order* at para. 54. The FCC viewed "ten days as a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied." *Id.* at para. 55. The FCC also stressed the importance of timely access to provisioned collocation space and urged state commissions to ensure that such space is available in a timely and pro-competitive manner so that new entrants will have a full and fair opportunity to compete. *Id.*

CLEC to request various forms of collocation in the alternative, in the event that the CLEC's first collocation choice is not available, without the necessity of going through multiple quotation intervals. SWBT is obligated to complete construction of all "active collocation space" requests for caged collocation within 90 days from the CLEC's acceptance of the quote.⁷⁰ Provision of cageless collocation in "active collocation space" shall be completed within 55 days of the CLEC's acceptance of the quote in instances where the CLEC is installing all of its own bays; when SWBT is installing the bays, the provisioning interval shall be 70 days. The tariff also establishes intervals for construction of "inactive collocation space." SWBT is required to provide reduced intervals for CLECs requesting augments to existing collocation arrangements.⁷¹

The collocation tariff allows SWBT to provide security protection for its equipment to the extent allowed by the FCC in its *Advanced Services Order*.⁷² The tariff provides CLECs with twenty-four hours a day, seven days a week access to their collocated equipment, without a security escort.⁷³ SWBT is allowed to impose security arrangements as stringent as those SWBT maintains for its own employees or for authorized contractors.⁷⁴ SWBT will not require security arrangements that increase the cost of collocation unless such arrangements are necessary to protect SWBT's equipment.⁷⁵ The tariff further allows SWBT to erect a cage around its own equipment under certain limited circumstances.⁷⁶ The Texas Commission believes the provision comports with the rationale of the *Advanced Services Order*.⁷⁷

In conformance with the *Advanced Services Order*, the collocation tariff allows CLECs to install equipment that is used or useful for interconnection or access to UNEs regardless of

⁷⁰ *Id.* at Sec. 6.1.3(C).

⁷¹ *Id.* at Sec. 6.1.3(D).

⁷² The FCC clearly delineated the standards regarding security arrangements for the ILEC's premises. The FCC concluded that ILECs could impose security arrangements on CLECs that are as stringent as the security arrangements they maintain at their own premises for their own employees or authorized contractors. *Advanced Services Order*, 14 F.C.C.R. at 4773, para. 47. In agreeing with ILECs that the protection of their equipment is important to their ability to offer service to their customers, the FCC permitted ILECs to install security cameras or other monitoring systems, to require badges with computerized tracking systems, and/or to require security training of CLECs' personnel. *Id.* at 4773, para. 48. The ILEC must, however, allow CLECs to have access to their collocated equipment 24 hours a day, seven days a week. *Id.* at 4773, para. 49. The ILEC may not require a security escort nor may the ILEC delay a CLEC's entry into the ILEC's premises by requiring that an ILEC employee be present. *Id.*

⁷³ *Id.* at Sec. 6.1.2(E). The tariff does require the CLEC to notify SWBT when it dispatches a CLEC employee to the eligible structure, but does not allow SWBT to delay a CLEC's entry or access because of such notice.

⁷⁴ *Id.* at Sec. 6.1.2 ("To the extent existing security arrangements are more stringent from one group than the other, SWBT may impose the more stringent requirements.")

⁷⁵ *Id.*

⁷⁶ *See, id.* at Sec. 6.1.2(D).

⁷⁷ SWBT can charge a CLEC for erecting a cage around SWBT's equipment only if SWBT can show that the cost of erecting the cage is less than other security measures and SWBT does not take up valuable collocation space by constructing such a cage.

other functionalities inherent in the equipment.⁷⁸ CLECs are allowed to collocate equipment such as DSLAMs, routers, ATM multiplexers, and remote switching modules.⁷⁹ SWBT may not place any limitations on the ability of CLECs to use all of the features, functions, and capabilities of collocated equipment. The tariff requires CLECs to certify in writing that their equipment is used and useful for interconnection or access to UNEs and provides a procedure for SWBT to challenge collocation of equipment that SWBT believes is not used or useful for interconnection or access to UNEs.

The tariff also allows CLECs to construct their own cross-connect facilities between collocated equipment on SWBT's premises, subject only to the same reasonable safety requirements that SWBT imposes on its own equipment, and defines the parameters for such construction. CLECs using physical collocation are not required to purchase cross-connect equipment from SWBT or its affiliates.

The tariff allows SWBT to require that CLECs install only equipment that is NEBS⁸⁰ compliant only to the extent that SWBT imposes such requirements on its own equipment.⁸¹ SWBT may not deny collocation of a CLEC's equipment because it fails to meet the NEBS reliability standards. If SWBT believes the CLEC's equipment is not NEBS compliant, the CLEC will be given ten days to make it compliant or remove the equipment. If SWBT and the CLEC do not resolve the dispute, SWBT or the CLEC may file a complaint at the Texas Commission seeking dispute resolution under the Texas Commission's expedited procedures.

In terms of space reservation and exhaust, the tariff establishes a rebuttable presumption that space is available for physical collocation. If SWBT denies a collocation request, SWBT must submit a detailed report to the CLEC and to the Texas Commission in conformance with the tariff.⁸² The report must set forth the total amount of space available at the requested

⁷⁸ *Id.* at Sec. 9.1. In the *Advanced Services Order*, the FCC concluded that an ILEC may not refuse to allow collocation of equipment that is "used or useful" for interconnection or access to UNEs, "regardless of other functionalities inherent in such equipment." *Advanced Services Order*, 14 F.C.C.R. at 4773, para. 28.

⁷⁹ In the *Advanced Services Order*, the FCC concluded that ILECs must permit CLECs to collocate equipment such as DSLAMs, routers, ATM multiplexers, and remote switching modules and may not place any limitations on the ability of CLECs to "use all the features, functions, and capabilities of collocation equipment," including switching and routing features and functions. *Id.* at 4773, para. 30. The FCC, however, declined to permit the collocation of equipment that is used solely for switching or enhanced services. *Id.*

⁸⁰ Bellcore Network Equipment and Building Specifications.

⁸¹ *Advanced Services Order* at 10.1. As to safety of the equipment collocated by CLECs, the FCC concluded that an ILEC may impose a requirement that CLECs install equipment that meets Bellcore's Network Equipment and Building Specifications (NEBS) safety standards to the extent that the ILEC imposes such a requirement on its own equipment. *Advanced Services Order* at 4773, para. 36. If an ILEC denies a CLEC the ability to collocate certain equipment, citing safety concerns, the ILEC must provide the CLEC a list of all equipment the ILEC locates within the premises, together with an affidavit attesting that all of the ILEC's equipment meets or exceeds the safety standard that the ILEC contends the CLEC's equipment must meet. *Id.* The list and affidavit must be provided to the CLEC within five business days. *Id.*

⁸² *Id.* Under the FTA, ILECs must provide physical collocation space unless they can demonstrate to the state commission that space limitations prevent them from providing such space or it is not technically feasible to provide physical collocation. 47 U.S.C. § 251(c)(6). FCC concluded that the ILEC should be required to allow any CLEC that is denied physical collocation at the ILEC's premises to tour the premises. *Advanced Services Order* at 4773, para. 57. If, after the tour, the ILEC and CLEC disagree about whether space limitations preclude collocation, both

premises and must provide detailed floor plans identifying space occupied by or reserved for other collocators, SWBT or its affiliate. The report must also include the measures SWBT is taking to make additional space available for collocation. SWBT is also required to allow any CLEC that is denied physical collocation space to tour SWBT's premises.⁸³ If, after the tour, the SWBT and the CLEC disagree about whether space limitations preclude collocation, both carriers may present their written arguments to a third party engineer (TPE). The decision of the TPE may be appealed to the Texas Commission by either party. The tariff also requires SWBT to provide a requesting CLEC, within ten days, a report indicating available collocation space at particular SWBT premises. SWBT is required to maintain a document on its internet site that indicates all premises that are full; the document must be updated within ten days of the date at which a premises runs out of collocation space.⁸⁴

In Order No. 59,⁸⁵ the Texas Commission also required SWBT to implement a transition plan. The transition plan is applicable to CLECs with one or more existing caged collocation arrangements, as well as to CLECs that currently have applications pending. CLECs with one or more existing caged collocation arrangements, including planned collocation arrangements for which applications were pending as of the date of Order No. 59, shall be converted to the rate structure and rates in the revised tariff. During a conversion of existing caged collocation arrangements to the revised collocation tariff, no nonrecurring charges are applicable and the monthly recurring charges will be the rates established in the new collocation tariff. Order No. 59 further provided that, as of the date of the Order, CLECs could convert caged collocation arrangements to other types of collocation available under the revised collocation tariff. Transition issues relating to time intervals for pending collocation requests were also addressed in Order No. 51.⁸⁶

b. Virtual Collocation

Section 251(c)(6) requires ILECs to "provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."⁸⁷

carriers may present their arguments to the state commission for review. *Id.* The FCC also requires the ILEC to provide a requesting CLEC, within ten days, a report indicating the ILEC's available collocation space at a particular premises. *Id.* The report must set forth the amount of space available at each requested premises, the number of collocators, and any modifications in the use of space since the last report; the ILEC must also set forth in the report the measures the ILEC is taking to make additional space available for collocation. *Id.* The ILEC must also maintain a document on its internet site that indicates all premises that are full; the document must be updated within ten days of the date at which a premises runs out of collocation space. *Id.* The FCC also required ILECs to remove obsolete unused equipment from their premises upon a reasonable request by a competitor or upon the order of a state commission. *Id.* at 4773, para. 60.

⁸³ Physical Collocation Tariff, Sec. 6.2.1.1 (The tour shall be scheduled within 5 business days of the request for a tour and the tour must take place within 10 business days of the request.)

⁸⁴ *Id.* at Sec. 6.2.4.

⁸⁵ Order No. 59 is attached in the Texas Commission's Appendix I, Tab A-8).

⁸⁶ Order No. 51 is attached in the Texas Commission's Appendix I, Tab A-3).

⁸⁷ 47 U.S.C § 251(c)(6).

During the collaborative process, SWBT and the participants implemented a Virtual Collocation tariff that not only encompassed FCC requirements, but also included an additional form of virtual collocation. The revised tariff provides for virtual collocation, "wherein SWBT maintains and repairs the virtually collocated equipment."⁸⁸ This is the "traditional" form of virtual collocation that is required under FCC's rulings.⁸⁹ In addition, the tariff provides for virtual collocation, "wherein the Collocator maintains and repairs the virtually collocated equipment."⁹⁰ This option gives CLECs additional avenues when determining which type of arrangement is most efficient. By making a second type of virtual collocation available, SWBT provides further evidence of its good faith effort to offer CLECs collocation arrangements that provide them a reasonable opportunity to compete.

As of October 31, 1999, SWBT indicated that it had completed 641 collocation arrangements for CLECs, while 244 were pending. SWBT has also implemented Texas Commission approved performance measures relating to collocation including missed due dates, average time for delays, and percent of requests processed in timeframes set out in the tariffs.

c. Rates for Collocation

The collocation tariffs contain interim rates, subject to true-up, for all aspects and methods of available collocation, with few, if any rates being subject to determination on an individual case basis. The Texas Commission's collocation orders, with attachments, are contained in Appendix I, Tab A, and provide detail on the interim rates. The Texas Commission established an arbitration docket⁹¹ to establish the permanent rates for SWBT's revised collocation tariffs. AT&T is presenting a training session on its cost model on February 4, 2000. The cost studies and initial testimony are due by all parties on April 12, 2000 and rebuttal testimony is due on May 17, 2000. The hearing is scheduled for June 15 and 16, 2000.

d. Commercial Performance

PM-107 measures the percent missed due dates for collocation requests. It is disaggregated for all eligible types of physical and virtual collocation. It is measured against a benchmark of 95% within the due date. Damages and assessments are calculated based on the number of days SWBT is late. Based on data for the months of June through November, SWBT has provided compliant performance for this measure.⁹²

⁸⁸ Physical And Virtual Collocation Tariffs, Application of Southwestern Bell Telephone Company, App. C, Vol. 135, Tab 1947, Virtual Collocation Tariff, Sec. 26.1 (Nov. 2, 1999) (hereinafter "Virtual Collocation Tariff").

⁸⁹ See Local Competition First Report and Order, 11 FCC Rcd at 15782.

⁹⁰ Virtual Collocation Tariff, Sec. 26.14.

⁹¹ PUCT Docket No. 21333, *Proceeding to Establish Permanent Rates For Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*.

⁹² The Texas Commission would note that this data was compiled under the previous collocation tariff. The current collocation tariff, that requires quotes and provisioning in a shorter time frame, became effective in October 1999. PM-107 was modified to reflect the changes in the tariff. As modified, PM-107 requires SWBT to disaggregate data into the different categories of collocation.

PM-109 measures the percent of requests processed within the tariffed timelines. SWBT must meet the tariffed intervals 90% of the time in order to comply with the benchmark. SWBT provided compliant performance for this measure for June through November.⁹³

In conjunction with the Performance Standards, the timelines established for CLEC orders and the new site review procedures eliminate major obstacles to CLEC interconnection with SWBT. The establishment of procedures for title transfer provides CLECs with the opportunity to transition from current arrangements to those that will better suit their business needs. In addition, CLECs still have available the Texas Commission's arbitration and mediation processes.

Based on the evidence in the record, the Texas Commission verifies that SWBT has satisfied the requirements of 271(c)(2)(B)(i).

B. Checklist Item Two – Unbundled Network Elements

Has SWBT provided nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1) of FTA, pursuant to section 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

The Texas Commission finds that SWBT has satisfied the requirements of checklist item 2. SWBT provides nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). In conformance with section 251(c)(3), SWBT provides unbundled network elements upon request of a CLEC at any technically feasible point, in a manner that allows such elements to be combined for the provision of telecommunications services.⁹⁴ SWBT also provides CLECs with OSS functionality that provides CLECs with parity or a meaningful opportunity to compete.

1. Provision of Unbundled Network Elements

During the Texas Commission's 271 proceeding, CLEC complaints under this checklist item were focused on the combination issue and on SWBT's provision of certain elements, such as loops, transport, and the switch; issues with regard to loop, transport, and switch are discussed under Checklist Items 4, 5, and 6 respectively. CLECs also repeated arguments that were raised with reference to other checklist items or the public interest; those arguments are addressed in the appropriate section of this recommendation.

While this project was pending, the Supreme Court vacated Commission rule 319.⁹⁵ Rule 319 required ILECs to provide requesting carriers with access to a minimum of seven network

⁹³ SWBT missed this measure for one CLEC in the Dallas/Ft. Worth area during the month of August. PM-109 is a Tier-1 measure only. There were only two CLECs with more than ten data points.

⁹⁴ *Ameritech Michigan* at 20585-86, para. 78; *Bell Atlantic New York*, CC Docket No. 99-295 at para. 229.

⁹⁵ *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S. Ct. 721, 736 (Jan. 1999).